

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

ALISON TURNER,

Plaintiff,

v.

CIVIL ACTION NO. 3:12-7245
(Consolidated with 3:12-7246 and 3:12-7248)

TOYS “R” US, INC., a Delaware Corporation
doing business in Cabell County, West Virginia;
MOHAMMAD ROMAN, individually and in his
capacity as general store manager of TOYS “R”
US, INC.; and JOHN DOE, unknown person or persons,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is Plaintiff’s Motion to Strike Defendants’ Joint Response in Opposition to Plaintiff’s Motion for Remand (ECF No. 55). The Court **DENIES** this Motion.

Plaintiff argues that the Court should strike Defendants’ Response in Opposition as not timely filed, per Local Rule of Civil Procedure 7.1(a)(7), which states, “Memoranda and other materials in response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 days from the date of service of the motion.” However, Plaintiff ignores the Federal Rules of Civil Procedure, which state, “When a party may or must act within a specified time *after* service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), *3 days are added after the period would otherwise expire* under Rule 6(a).”¹ Fed. R. Civ. P. 6(d) (emphasis added).

¹ Federal Rule of Civil Procedure 6(a) states, “The following rules apply in computing any time period specified . . . in any local rule . . .,” including when computing a “period . . . stated in days.”

Federal Rule of Civil Procedure 5(b)(2)(E) allows service “by electronic means.” Plaintiff served her Motion for Remand on Defendants’ counsel via electronic filing with the Clerk of Court using the CM/ECF system on September 9, 2013. Mot. for Remand, ECF. No. 50. Defendants thus had 17 days in which to file their Response to Plaintiff’s Motion, and they did so. Defendants’ Response is therefore timely, and Plaintiff’s Motion to Strike is without merit. Plaintiff’s Motion to Strike Defendants’ Joint Response in Opposition to Plaintiff’s Motion for Remand is **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this written Opinion and Order to counsel of record and any unrepresented parties.

ENTER: September 30, 2013



ROBERT C. CHAMBERS, CHIEF JUDGE